

OGC Has Reviewed

16 July 1948

MEMORANDUM TO THE FILES

**SUBJECT: Reimbursement By the Government From
Its Negligent Employees.**

Case No. 00038 involved an accident which was occasioned by the negligent act of a Government employee, and resulted in damages to a Government-owned vehicle, as well as a privately owned vehicle.

The facts of record appear to establish a prima facie case of recklessness or gross negligence on the part of the employee, for which reason the CIA Property Survey Board has conditionally recommended that the individual be held pecuniarily liable in the sum of \$98.90 for damages to the Government-owned vehicle, as well as the cost of repairs for the privately-owned vehicle.

The Survey Board has made a conditional recommendation for the following reasons:

- a. The language of present administrative regulations authorizes the imposition of pecuniary liability solely on the basis of damage to public property;
- b. The evidence submitted by the investigating officer may possibly be supplemented; and
- c. The language of a memorandum dated 28 October 1947 from the General Counsel to the Chief of Finance on the general subject here concerned, appears to have suggested a difference of interpretation by the Members of the Survey Board.

The scope of this memorandum is restricted to a continuation of the final paragraph of said memorandum, in order to resolve any questions of interpretation which may have arisen.

An almost identical case caused the Secretary of Agriculture to write to the Attorney General, requesting a clarification of his authority to proceed against negligent Government employees who had caused damage to privately owned vehicles. In 40 Attorney General 9 dated 25 March

1941, the Attorney General stated that it was the intention of Congress that the Government should assume the burden under the Negligence Act of 28 December 1922, 31 U.S.C.A. 215, and that it was not its intent that the burden should be shifted to the employee.

The Attorney General continued with a review of this general subject and annunciated certain principles which are for consideration in future cases of the type here involved.

As a general rule, it may be stated that in the absence of statutory authority, express or implied, an officer or employee of the Government may not be administratively deprived of his compensation. (30 Court of Claims 341, 246 U.S. 388, 8 Fed. 2nd. 669, 34 Attorney General 571.) The aforesaid authorities also stand for the principle that if such a collection were attempted to be enforced, the employee would undoubtedly be entitled to his day in court, as in other claims asserted by the United States Government against its citizens.

The only basis of collection suggested by the Attorney General is one involving the acquiescence of the employee.

The Attorney General, in reviewing the legislative history of the Negligence Act, referred to the case of Dennis v. the United States, 2 Court of Claims 210, which involved a negligent act causing liability on the part of numerous Government employees. Upon being held responsible for their act, which was performed within the scope of their employment, general statutes of relief were passed by Congress on the principle that the burden should be assumed by the Government.

278 U.S. 41, and other cases not referred to in this memorandum, reflect that the Congress has, by general legislation, progressively assumed liability to persons sustaining injury through the negligence of its officers or employees and has not made provision for the assertion of claims by the Government against its negligent employees. The Attorney General, in the cited case, concluded that in the absence of statutory authority, there was no power to enforce a collection against a negligent employee and suggested that the administrative remedies in the form of disciplinary action, including suspension and dismissal, were probably sufficient.

